

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



Finance Docket No 35705

JAMES RIFFIN AND ERIC STROHMEYER – ACQUISITION AND OPERATION
EXEMPTION – IN RIO GRANDE AND MINERAL COUNTIES, CO

233/53 ENTERED
Office of Proceedings

MOTION FOR LEAVE TO AMEND

JAN - 8 2013

Part of
Public Record

1. James Riffin ("Riffin"), one of the Applicants in this proceeding, herewith files this Motion for Leave to Amend ("Motion") the Notice of Exemption ("NOE") that is the subject of this proceeding, and in support thereof, states:

2 While the NOE did contain all of the information required by 49 CFR 1150.33, commenters have indicated that the commenters would like additional information, and have indicated that they would like certain matters clarified.

3 Therefore, in the interest of clarity, and in the interest of full disclosure of non-proprietary information, Riffin would move to Amend the NOE that is the subject of this proceeding, and in so amending, provide the Board, and interested parties, with additional, non-mandatory information.

4. Simultaneously with the filing of this Motion, Riffin has also filed a Motion to Strike the document submitted by Clyde Dooley on January 4, 2013. While Riffin moves to strike Mr. Dooley's document, on technical, procedural grounds (he can only represent himself, not others, he needs to demonstrate 'standing' in order to participate), Riffin recognizes that Mr. Dooley, and others, have demonstrated an interest in the proceeding. While the Applicants may not be required to provide the detailed information sought by Mr. Dooley, *et. al.*, the Applicants are not opposed to providing more detailed information. Consequently, the Applicants have appended an 'Appendix' to their NOE, which contains a considerable quantity of additional detailed information regarding what Applicants propose to do, once they obtain authority from the Board

to operate on a portion of the Denver & Rio Grande Railway Historical Foundation, Inc.'s ("DRGRHF") line of railroad.

5. The two commenters to date, Mr. Dooley and the San Luis & Rio Grande Railroad ("SLRG"), both asked the Board for a stay of the proceeding, in order to have more time to develop a more complete record. Unfortunately, neither commenter addressed the four prongs that must be addressed by a motion for a stay. Consequently, it would not be appropriate for the Board to issue a stay of the proceeding.

6. However, the Applicants recognize that interested parties have expressed an interest in obtaining more information, and have expressed an interest in participating in this proceeding, and to do so, some sort of 'stay' would be appropriate.

7. In *James Riffin – Acquisition and Operation Exemption – Veneer Mfg Co Spur – In Baltimore County, MD*, STB FD No. 35236, the Board permitted Riffin to amend his NOE three times. And each time Riffin filed an amended NOE, the Board re-started the '30-day' period of time before which an NOE becomes effective. See 49 CFR 1150.32(b).

8. Riffin would ask that if the Board grants Riffin's Motion to Amend, that the Board also expressly state that the 30-day period of time will commence on the day the Applicants file their Amended NOE. In so doing, the Board will have granted a 3-week stay without actually formally granting a stay (and without requiring a formal request for a stay).

9. In the event that three-weeks after the Applicants have filed their Amended NOE, it does not appear that the record is sufficiently complete to permit the NOE to become effective, the Applicants will not oppose a request for a limited stay, to permit the record to be more fully developed.

10. Applicants are aware that winters in Colorado are rather severe, and last longer than winters on the East Coast. Consequently, Applicants are cognizant that were their NOE to become effective prior to March, 2013, Applicants would not likely do much with their authority, until the winter snows have melted substantially. So delaying the effective date of their NOE by

a few weeks, is not likely to significantly adversely affect their ability to begin providing freight rail service.

11. By permitting Applicants to amend their NOE, and by striking the comments filed by Mr. Dooley, the Board will have given interested parties time to consider / reconsider, what they attempted to advocate in their initial comments.

12. In the SLRG's comments, it states:

"Applicants seek to avoid handling TIIH commodities in violation of their common carrier obligation." Protest at 10. ¶ 4

13. Mr. Dooley made a similar comment.

14. What none of the parties may realize, is that in advocating that Applicants must carry TIIH commodities, these same parties will be judicially estopped from opposing, at a later date, the carriage of TIIH commodities on the subject Line

15. The probability that a request to carry TIIH commodities on the subject Line, is real. The San Luis valley is heavily farmed. Anhydrous ammonia is probably being used as a fertilizer. It presently is being trucked into the valley. The SLRG does not presently have any facilities where anhydrous ammonia could be transloaded from a rail car to a tanker truck. If a local shipper leveled a demand to carry a rail car of anhydrous ammonia, and if the carriage of that product has not been disclaimed, then it will have to be carried. And unloaded. Thereby putting the adjacent communities at risk of an unauthorized release.

16. Likewise, there is a high probability that silver / gold mining will resume. While the Applicants do not know what chemicals are used today to extract silver / gold / lead from ore, in the past, sulfuric acid and cyanide have been used. Both emit toxic fumes. {The fumes from sulfuric acid, while not technically toxic (the fumes are not poisonous enough to kill a human with only a breath or two), the fumes are still quite deadly. A breath or two will dissolve a person's lungs. And without lungs, humans die. And replacement lungs are hard to come by.}

So, unless modern precious metal extraction techniques do not require the use of these, and other toxic chemicals, there is a high probability that a demand for these chemicals on the outskirts of Creede, will materialize. And if the good folks of Creede, Mineral and Rio Grande Counties do not oppose the carriage of these chemicals (or continue to insist that Applicants hold out to carry these chemicals), then when Applicants are requested to carry these chemicals, or when the DRGRHF is asked to carry these chemicals to Creede, where they will be transloaded onto trucks, then trucked to the nearby ore processing plant, these same good folks **will be judicially estopped** from opposing the carriage of these chemicals. There is an old adage: "Be careful what you ask for. You might get it." Be careful what you say today. It may be held against you in the future.

17. WHEREFORE, Riffin would ask that the Board grant him leave to file an Amended NOE, and for such other and further relief.

18. Appended hereto is an original and ten copies of an Amended NOE, which Riffin would ask that the Board accept for filing.

Respectfully submitted.



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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January, 2013, a copy of the foregoing Motion for Leave to Amend NOE was served by first class mail, postage prepaid, upon the parties noted below.



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Note: A copy of this Motion to Amend. and a copy of the Amended NOE cannot be served on Eugene L. Farish, the attorney for the Town of South Fork. He did not include his address on the Protest that he filed for the Town of South Fork on January 7, 2013.